



Senate

General Assembly

File No. 610

February Session, 2014

Substitute Senate Bill No. 388

Senate, April 17, 2014

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 1-210 of the 2014 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2014*):

4 (b) Nothing in the Freedom of Information Act shall be construed to
5 require disclosure of:

6 (1) Preliminary drafts or notes provided the public agency has
7 determined that the public interest in withholding such documents
8 clearly outweighs the public interest in disclosure;

9 (2) Personnel or medical files and similar files the disclosure of
10 which would constitute an invasion of personal privacy;

11 (3) Records of law enforcement agencies not otherwise available to
12 the public which records were compiled in connection with the

13 detection or investigation of crime, if the disclosure of said records
14 would not be in the public interest because it would result in the
15 disclosure of (A) the identity of informants not otherwise known or the
16 identity of witnesses not otherwise known whose safety would be
17 endangered or who would be subject to threat or intimidation if their
18 identity was made known, (B) the identity of [minor] witnesses (i) to a
19 drug offense under chapter 420b, a sexual offense under subdivision
20 (2) of subsection (a) of section 53-21 or part VI of chapter 952 or a crime
21 of violence, (ii) who are under eighteen years of age at the time of
22 witnessing such offense or crime or making a statement to a law
23 enforcement agency concerning such offense or crime, (C) signed
24 statements of witnesses, (D) information to be used in a prospective
25 law enforcement action if prejudicial to such action, (E) investigatory
26 techniques not otherwise known to the general public, (F) arrest
27 records of a juvenile, which shall also include any investigatory files,
28 concerning the arrest of such juvenile, compiled for law enforcement
29 purposes, (G) the name and address of the victim of a sexual assault
30 under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or
31 injury or risk of injury, or impairing of morals under section 53-21, or
32 of an attempt thereof, or (H) uncorroborated allegations subject to
33 destruction pursuant to section 1-216;

34 (4) Records pertaining to strategy and negotiations with respect to
35 pending claims or pending litigation to which the public agency is a
36 party until such litigation or claim has been finally adjudicated or
37 otherwise settled;

38 (5) (A) Trade secrets, which for purposes of the Freedom of
39 Information Act, are defined as information, including formulas,
40 patterns, compilations, programs, devices, methods, techniques,
41 processes, drawings, cost data, customer lists, film or television scripts
42 or detailed production budgets that (i) derive independent economic
43 value, actual or potential, from not being generally known to, and not
44 being readily ascertainable by proper means by, other persons who can
45 obtain economic value from their disclosure or use, and (ii) are the
46 subject of efforts that are reasonable under the circumstances to

47 maintain secrecy; and

48 (B) Commercial or financial information given in confidence, not
49 required by statute;

50 (6) Test questions, scoring keys and other examination data used to
51 administer a licensing examination, examination for employment or
52 academic examinations;

53 (7) The contents of real estate appraisals, engineering or feasibility
54 estimates and evaluations made for or by an agency relative to the
55 acquisition of property or to prospective public supply and
56 construction contracts, until such time as all of the property has been
57 acquired or all proceedings or transactions have been terminated or
58 abandoned, provided the law of eminent domain shall not be affected
59 by this provision;

60 (8) Statements of personal worth or personal financial data required
61 by a licensing agency and filed by an applicant with such licensing
62 agency to establish the applicant's personal qualification for the
63 license, certificate or permit applied for;

64 (9) Records, reports and statements of strategy or negotiations with
65 respect to collective bargaining;

66 (10) Records, tax returns, reports and statements exempted by
67 federal law or the general statutes or communications privileged by
68 the attorney-client relationship, marital relationship, clergy-penitent
69 relationship, doctor-patient relationship, therapist-patient relationship
70 or any other privilege established by the common law or the general
71 statutes, including any such records, tax returns, reports or
72 communications that were created or made prior to the establishment
73 of the applicable privilege under the common law or the general
74 statutes;

75 (11) Names or addresses of students enrolled in any public school or
76 college without the consent of each student whose name or address is
77 to be disclosed who is eighteen years of age or older and a parent or

78 guardian of each such student who is younger than eighteen years of
79 age, provided this subdivision shall not be construed as prohibiting the
80 disclosure of the names or addresses of students enrolled in any public
81 school in a regional school district to the board of selectmen or town
82 board of finance, as the case may be, of the town wherein the student
83 resides for the purpose of verifying tuition payments made to such
84 school;

85 (12) Any information obtained by the use of illegal means;

86 (13) Records of an investigation or the name of an employee
87 providing information under the provisions of section 4-61dd or
88 sections 17b-301c to 17b-301g, inclusive;

89 (14) Adoption records and information provided for in sections 45a-
90 746, 45a-750 and 45a-751;

91 (15) Any page of a primary petition, nominating petition,
92 referendum petition or petition for a town meeting submitted under
93 any provision of the general statutes or of any special act, municipal
94 charter or ordinance, until the required processing and certification of
95 such page has been completed by the official or officials charged with
96 such duty after which time disclosure of such page shall be required;

97 (16) Records of complaints, including information compiled in the
98 investigation thereof, brought to a municipal health authority pursuant
99 to chapter 368e or a district department of health pursuant to chapter
100 368f, until such time as the investigation is concluded or thirty days
101 from the date of receipt of the complaint, whichever occurs first;

102 (17) Educational records which are not subject to disclosure under
103 the Family Educational Rights and Privacy Act, 20 USC 1232g;

104 (18) Records, the disclosure of which the Commissioner of
105 Correction, or as it applies to Whiting Forensic Division facilities of the
106 Connecticut Valley Hospital, the Commissioner of Mental Health and
107 Addiction Services, has reasonable grounds to believe may result in a
108 safety risk, including the risk of harm to any person or the risk of an

109 escape from, or a disorder in, a correctional institution or facility under
110 the supervision of the Department of Correction or Whiting Forensic
111 Division facilities. Such records shall include, but are not limited to:

112 (A) Security manuals, including emergency plans contained or
113 referred to in such security manuals;

114 (B) Engineering and architectural drawings of correctional
115 institutions or facilities or Whiting Forensic Division facilities;

116 (C) Operational specifications of security systems utilized by the
117 Department of Correction at any correctional institution or facility or
118 Whiting Forensic Division facilities, except that a general description
119 of any such security system and the cost and quality of such system
120 may be disclosed;

121 (D) Training manuals prepared for correctional institutions and
122 facilities or Whiting Forensic Division facilities that describe, in any
123 manner, security procedures, emergency plans or security equipment;

124 (E) Internal security audits of correctional institutions and facilities
125 or Whiting Forensic Division facilities;

126 (F) Minutes or recordings of staff meetings of the Department of
127 Correction or Whiting Forensic Division facilities, or portions of such
128 minutes or recordings, that contain or reveal information relating to
129 security or other records otherwise exempt from disclosure under this
130 subdivision;

131 (G) Logs or other documents that contain information on the
132 movement or assignment of inmates or staff at correctional institutions
133 or facilities; and

134 (H) Records that contain information on contacts between inmates,
135 as defined in section 18-84, and law enforcement officers;

136 (19) Records when there are reasonable grounds to believe
137 disclosure may result in a safety risk, including the risk of harm to any

138 person, any government-owned or leased institution or facility or any
139 fixture or appurtenance and equipment attached to, or contained in,
140 such institution or facility, except that such records shall be disclosed
141 to a law enforcement agency upon the request of the law enforcement
142 agency. Such reasonable grounds shall be determined (A) (i) by the
143 Commissioner of Administrative Services, after consultation with the
144 chief executive officer of an executive branch state agency, with respect
145 to records concerning such agency; and (ii) by the Commissioner of
146 Emergency Services and Public Protection, after consultation with the
147 chief executive officer of a municipal, district or regional agency, with
148 respect to records concerning such agency; (B) by the Chief Court
149 Administrator with respect to records concerning the Judicial
150 Department; and (C) by the executive director of the Joint Committee
151 on Legislative Management, with respect to records concerning the
152 Legislative Department. As used in this section, "government-owned
153 or leased institution or facility" includes, but is not limited to, an
154 institution or facility owned or leased by a public service company, as
155 defined in section 16-1, a certified telecommunications provider, as
156 defined in section 16-1, a water company, as defined in section 25-32a,
157 or a municipal utility that furnishes electric, gas or water service, but
158 does not include an institution or facility owned or leased by the
159 federal government, and "chief executive officer" includes, but is not
160 limited to, an agency head, department head, executive director or
161 chief executive officer. Such records include, but are not limited to:

162 (i) Security manuals or reports;

163 (ii) Engineering and architectural drawings of government-owned
164 or leased institutions or facilities;

165 (iii) Operational specifications of security systems utilized at any
166 government-owned or leased institution or facility, except that a
167 general description of any such security system and the cost and
168 quality of such system, may be disclosed;

169 (iv) Training manuals prepared for government-owned or leased
170 institutions or facilities that describe, in any manner, security

171 procedures, emergency plans or security equipment;

172 (v) Internal security audits of government-owned or leased
173 institutions or facilities;

174 (vi) Minutes or records of meetings, or portions of such minutes or
175 records, that contain or reveal information relating to security or other
176 records otherwise exempt from disclosure under this subdivision;

177 (vii) Logs or other documents that contain information on the
178 movement or assignment of security personnel;

179 (viii) Emergency plans and emergency preparedness, response,
180 recovery and mitigation plans, including plans provided by a person
181 to a state agency or a local emergency management agency or official;
182 and

183 (ix) With respect to a water company, as defined in section 25-32a,
184 that provides water service: Vulnerability assessments and risk
185 management plans, operational plans, portions of water supply plans
186 submitted pursuant to section 25-32d that contain or reveal
187 information the disclosure of which may result in a security risk to a
188 water company, inspection reports, technical specifications and other
189 materials that depict or specifically describe critical water company
190 operating facilities, collection and distribution systems or sources of
191 supply;

192 (20) Records of standards, procedures, processes, software and
193 codes, not otherwise available to the public, the disclosure of which
194 would compromise the security or integrity of an information
195 technology system;

196 (21) The residential, work or school address of any participant in the
197 address confidentiality program established pursuant to sections 54-
198 240 to 54-240o, inclusive;

199 (22) The electronic mail address of any person that is obtained by
200 the Department of Transportation in connection with the

201 implementation or administration of any plan to inform individuals
202 about significant highway or railway incidents;

203 (23) The name or address of any minor enrolled in any parks and
204 recreation program administered or sponsored by any public agency;

205 (24) Responses to any request for proposals or bid solicitation issued
206 by a public agency or any record or file made by a public agency in
207 connection with the contract award process, until such contract is
208 executed or negotiations for the award of such contract have ended,
209 whichever occurs earlier, provided the chief executive officer of such
210 public agency certifies that the public interest in the disclosure of such
211 responses, record or file is outweighed by the public interest in the
212 confidentiality of such responses, record or file;

213 (25) The name, address, telephone number or electronic mail
214 address of any person enrolled in any senior center program or any
215 member of a senior center administered or sponsored by any public
216 agency;

217 (26) All records obtained during the course of inspection,
218 investigation, examination and audit activities of an institution, as
219 defined in section 19a-490, that are confidential pursuant to a contract
220 between the Department of Public Health and the United States
221 Department of Health and Human Services relating to the Medicare
222 and Medicaid programs;

223 (27) Any record created by a law enforcement agency or other
224 federal, state, or municipal governmental agency consisting of a
225 photograph, film, video or digital or other visual image depicting the
226 body or any portion of the body of a victim of a homicide who was
227 eighteen years of age or older at the time the act or acts resulting in the
228 homicide were committed, to the extent that the disclosure of such
229 record could reasonably be expected to constitute an unwarranted
230 invasion of [the] personal privacy, [of the victim or the victim's
231 surviving family members.] provided nothing in this subdivision shall
232 be construed to prohibit the inspection of such a record in accordance

233 with section 3 of this act;

234 (28) Any record created by a law enforcement agency or other
235 federal, state or municipal governmental agency consisting of an audio
236 recording of an emergency 9-1-1 call or other call for assistance that is
237 made by a member of the public when such call (A) relates to a
238 homicide, and (B) captures, conveys or relates to the impaired physical
239 condition of the caller or another person, to the extent that the
240 disclosure of such record could reasonably be expected to constitute an
241 unwarranted invasion of personal privacy, provided nothing in this
242 subdivision shall be construed to prohibit listening to such record in
243 accordance with section 3 of this act;

244 (29) Any record created by a law enforcement agency or other
245 federal, state or municipal governmental agency consisting of an audio
246 recording that is an operative communication among law enforcement
247 personnel when such communication (A) relates to a homicide, and (B)
248 captures, conveys or relates the impaired physical condition of the
249 caller or another person, to the extent that the disclosure of such record
250 could reasonably be expected to constitute an unwarranted invasion of
251 personal privacy, provided nothing in this subdivision shall be
252 construed to prohibit listening to such record in accordance with
253 section 3 of this act.

254 Sec. 2. (NEW) (*Effective October 1, 2014*) No public agency may
255 disclose, under the Freedom of Information Act, as defined in section
256 1-200 of the general statutes, any record created by a law enforcement
257 agency or other federal, state or municipal governmental agency
258 consisting of a photograph, film, video or digital or other visual image
259 depicting the body or any portion of the body of a victim of a homicide
260 who was under eighteen years of age at the time the act or acts
261 resulting in the homicide were committed.

262 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) As used in this section:

263 (1) "Image" means a record described in subdivision (27) of
264 subsection (b) of section 1-210 of the general statutes, as amended by

265 this act; and

266 (2) "Audio recording" means a record described in subdivision (28)
267 or (29) of subsection (b) of section 1-210 of the general statutes, as
268 amended by this act.

269 (b) A public agency shall permit any person to view an image or to
270 listen to an audio recording at the office or place of business of such
271 agency during regular office or business hours. In the case of an audio
272 recording, the agency shall, upon request, provide a transcript of the
273 audio recording for a fee not to exceed the cost to the agency of making
274 such transcript.

275 (c) Whenever a public agency receives a request from any person to
276 copy or receive a copy of any image or audio recording, and the public
277 agency reasonably believes that the copying of such image or audio
278 recording could constitute an unwarranted invasion of personal
279 privacy, the public agency shall not provide a copy or permit the
280 copying of the requested image or audio recording. Failure to comply
281 with a request to copy or receive a copy of records under this section
282 shall constitute a denial for the purposes of section 1-206 of the general
283 statutes.

284 (d) Whenever a public agency receives a notice of appeal under
285 section 1-206 of the general statutes concerning the public agency's
286 denial of a request to copy or receive a copy of a record under
287 subsection (c) of this section, the public agency shall make a reasonable
288 effort to provide notice of such complaint to the next of kin of the
289 homicide victim who is the subject of such record or, if an audio
290 recording, to any person who is recorded on such audio recording, or
291 the legal representative of such next of kin or person. Any next of kin
292 of the homicide victim who is the subject of such record or, if an audio
293 recording, any person who is recorded on such audio recording, or the
294 legal representative of such next of kin or person, may intervene as a
295 party in such appeal before the Freedom of Information Commission.
296 The burden of proof in any appeal under this section shall be upon the
297 person requesting a copy of a record under subsection (c) of this

298 section to establish that the copying of such record could not
 299 reasonably be expected to constitute an unwarranted invasion of
 300 personal privacy.

301 (e) Any person who removes, copies or otherwise duplicates an
 302 image or audio recording in violation of this section shall be guilty of a
 303 class A misdemeanor and each distinct violation of this section shall
 304 constitute a separate offense.

305 Sec. 4. (*Effective from passage*) The Legislative Program Review and
 306 Investigations Committee shall conduct a study regarding victim
 307 privacy and all of its aspects and make recommendations for any
 308 necessary legislative changes. On or before January 1, 2015, said
 309 committee shall submit its findings and recommendations concerning
 310 such study to the joint standing committees of the General Assembly
 311 having cognizance of matters relating to government administration
 312 and the judiciary.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	1-210(b)
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>from passage</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Various State Agencies	GF - Potential Cost	Minimal	Minimal
Judicial Dept.	GF - Potential Revenue Gain	Less than \$10,000	Less than \$10,000

Municipal Impact:

Municipalities	Effect	FY 15 \$	FY 16 \$
Various Municipalities	Potential Cost	Minimal	Minimal

Explanation

The bill modifies the statutes concerning freedom of information and access to public records. Various state and municipal agencies may potentially incur minimal costs to comply with the next of kin notification process should such agencies receive an appeal for denying access to certain records under the provisions of the bill.

The bill also makes violations of certain provisions a class A misdemeanor which may result in additional revenue for the Judicial Department. The revenue gain is anticipated to be less than \$10,000.

Additionally, the bill requires the Legislative Program Review and Investigations Committee to study victim privacy and issue a report by January 1, 2015. This is not expected to result in a fiscal impact as it is likely that the committee would rearrange its' 2014 project agenda to accommodate this study.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 388*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.*****SUMMARY:**

This bill:

1. prohibits agencies from disclosing under the Freedom of Information Act (FOIA) any agency record depicting a homicide victim who was under age 18 at the time of the crime;
2. creates a procedure allowing members of the public to (a) view adult homicide images or listen to homicide-related recordings an agency can keep confidential if disclosure would constitute an unwarranted invasion of privacy and (b) seek copies of them;
3. allows agencies to withhold from disclosure under FOIA any law enforcement audio recording of a call for assistance or communication between law enforcement personnel that relates to a homicide and includes a description of a person's impaired physical condition, if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy;
4. narrows the exemption under FOIA for law enforcement records identifying minor witnesses; and
5. requires the Legislative Program Review and Investigations Committee to study all aspects of victim privacy and recommend legislative changes to the Government Administration and Elections and Judiciary committees by January 1, 2015.

EFFECTIVE DATE: October 1, 2014, except for the study provision, which is effective upon passage.

IMAGES OF HOMICIDE VICTIMS

Disclosure — Minor Victim

FOIA requires agencies to disclose public records unless a federal or state statute or specific exemption within FOIA provides otherwise.

The bill prohibits agencies from disclosing under FOIA any agency record depicting a homicide victim who was under age 18 at the time of the crime. Currently agencies can withhold images of any homicide victim if disclosure could constitute an unwarranted invasion of personal privacy. The bill applies to images of a body or any portion of it.

Disclosure — Adult Victim

As under current law, an agency can withhold from disclosure under FOIA a federal, state, or municipal agency record consisting of an adult homicide victim's image (a victim age 18 or older at the time of the homicide) to the extent that disclosure could reasonably be expected to be an unwarranted invasion of the victim's or his or her surviving family members' personal privacy. The bill specifies that an agency can withhold the image if it depicts the victim's body or any portion of it. It allows the agency to withhold the image based on the unwarranted invasion of personal privacy, but no longer specifies that it is the victim's or his or her surviving family members' personal privacy.

VIEWING IMAGES AND LISTENING TO RECORDINGS

The bill requires agencies to allow the public to view images of adult homicide victims and listen to the recordings described below, regardless of whether an agency could withhold them from disclosure as an unwarranted invasion of personal privacy under FOIA or the bill. Viewing and listening must take place at the agency's office or place of business during regular office or business hours, as required for other records under FOIA. On request, the bill requires an agency

to provide a person with a transcript of an audio recording for a fee of no more than the cost of making the transcript.

The bill prohibits an agency from providing a copy or permitting copying of the image or recording if the agency reasonably believes copying could be an unwarranted invasion of personal privacy. Anyone denied a copy can appeal the agency's decision to the Freedom of Information Commission (FOIC) under the bill and current law.

Denial of Request for Copies

Under the bill, an agency that receives notice of an appeal of a denial of copies of an adult homicide victim's image or homicide-related recording must make a reasonable effort to notify the next of kin of the homicide victim in an image, the caller in a recording, or such a person's legal representative. The next of kin, caller, or legal representative can intervene as a party in the appeal before the FOIC. The bill places the burden of proof on the person requesting a copy of the record to show that copying could not reasonably be expected to be an unwarranted invasion of personal privacy.

Penalty

The bill makes it a class A misdemeanor to remove, copy, or duplicate an image or recording in violation of the bill's provisions. Each distinct violation is a separate offense. By law, a class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

LAW ENFORCEMENT AUDIO RECORDINGS

For record requests made through May 7, 2014, current law allows law enforcement agencies to withhold portions of audio tapes or recordings in which an individual describes a homicide victim's condition. This does not apply to 911 or other calls for assistance made by a person to a law enforcement agency.

After May 7, 2014, current law will require law enforcement agencies to release these recordings upon request unless another

exemption under FOIA allows the agency to withhold them.

Beginning October 1, 2014, the bill allows an agency to withhold from disclosure an audio recording:

1. of (a) a 911 or other call for assistance made by a member of the public or (b) an operative communication among law enforcement personnel;
2. that captures, conveys, or relates a person's impaired physical condition; and
3. that would constitute an unwarranted invasion of personal privacy.

RECORDS IDENTIFYING MINOR WITNESSES

The bill narrows the exemption from disclosure under FOIA for law enforcement records regarding minor witnesses of crimes by limiting it to records of witnesses to specific crimes. The specific crimes are:

1. drug sale or possession crimes or other offenses under the statutes regulating dependency-producing drugs;
2. sexual assault, prostitution, enticing a minor, or the portion of the risk of injury crime involving sexual contact; or
3. violent crimes.

The bill also specifies that a minor, currently defined as someone under age 18, must be under age 18 at the time of witnessing the crime or making a statement about it to a law enforcement agency.

This exemption allows agencies to keep these law enforcement records confidential. By law, law enforcement records may be withheld from disclosure if: (1) they were created in connection with detecting or investigating a crime and are not otherwise available to the public and (2) the agency determines that disclosure would not be in the public interest because it discloses a witness' identity.

BACKGROUND***Task Force on Victim Privacy and the Public's Right to Know***

PA 13-311 created this 17-member task force to consider and make recommendations regarding the balance between victim privacy under FOIA and the public's right to know. The task force reported its findings and recommendations to the legislature's majority and minority leadership in January 2014.

Related Bill

sSB 381 (File 425), favorably reported by the Government Administration and Elections Committee, contains similar provisions.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/01/2014)